

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Rates for Interstate Inmate Calling Services

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WC Docket No. 12-375

**INMATE CALLING SOLUTIONS, LLC’S
MOTION TO SET ASIDE THE PRICING POLICY DIVISION STAFF’S
INTERPRETATION OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION**

Inmate Calling Solutions, LLC (“ICSolutions”), pursuant to 47 C.F.R. § 1.41, § 1.46, et al., respectfully moves for the FCC to set aside the interpretation of the rates charged for inmate telephone services (“ITS”) required by Rule 64.6060, 47 C.F.R. § 64.6060 (“Reporting Rule”), set forth by the FCC’s Pricing Policy Division (“PPD Staff”) of the Wireline Competition Bureaus (“WCB”) in a letter dated May 25, 2017. WC Docket No. 12-375, DA 17-515, pg. 1 (WCB May 25, 2017) (“**PPD Staff Interpretation Letter**”). The PPD Staff’s interpretation of the rate information required by the Reporting Rule is inconsistent with the language of the Reporting Rule and, as a result of such inconsistency, requires information in excess of what is required by law, and therefore exceeds the FCC’s jurisdiction.

In the alternative, if the FCC will not set aside the PPD Staff’s interpretation of information required, ICSolutions respectfully requests the FCC to extend the filing date for the annual report, particularly as it pertains to the expanded scope of the rate information requirements of the Reporting Rule explained in the **PPD Staff Interpretation Letter**. This extension is warranted as the PPD Staff’s explanation of the specific information required for the Reporting Rule requires ICSolutions to write new programs to extract data for reporting, and such requirements were only first identified in the **PPD Staff Interpretation Letter**, which was

released approximately one month before the July 1, 2017 due date set in *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 17-431, para. 10 (WCB May 8, 2017) (“**Extension Order**”). Such a limited timeframe for such an expansion to the reporting requirement is inconsistent with the notice period set forth in both the **Extension Order** and the original *2015 ICS Order*, 30 FCC Rcd at 12890-93, paras. 263-73.

Background

Rule 64.6060 states:

a) Providers must submit a report to the Commission, by April 1st of each year, regarding interstate, intrastate, and international Inmate Calling Services for the prior calendar year. The report shall be categorized both by facility type and size and shall contain:

- 1) Current interstate, intrastate, and international rates for Inmate Calling Services;
- 2) Current Ancillary Service Charge amounts and the instances of use of each;
- 3) The Monthly amount of each Site Commission paid;
- 4) Minutes of use, per-minute rates and ancillary service charges for video visitation services;
- 5) The number of TTY-based Inmate Calling Services calls provided per facility during the reporting period;
- 6) The number of dropped calls the reporting Provider experienced with TTY-based calls; and
- 7) The number of complaints that the reporting Provider received related to *e.g.*, dropped calls, poor call quality and the number of incidences of each by TTY and TRS users.

(b) An officer or director of the reporting Provider must certify that the reported information and data are accurate and complete to the best of his or her knowledge, information, and belief. 47 C.F.R. § 64.6060.

The Reporting Rule received OMB approval on January 9, 2017. The Wireline Competition Bureau (“WCB”) issued a Public Notice stating that the first annual reports were required for calendar year 2016 and due June 1, 2017. Securus Technologies, Inc. (“Securus”)

filed a Motion for Extension on March 10, 2017.¹ The WCB issued a notice seeking comments on Securus's Motion on March 14, 2017, with initial comments due on March 28, 2017 and replies due by April 4, 2017. Several initial comments were submitted, including comments by Pay Tel, which included three pages of questions about the specifics of the information required in Exhibit A of its comments.

On May 8, 2017, the WCB issued its ruling on Securus's Motion, extending the due date for the annual reports to July 1, 2017, asserting that "this extension ensures the providers have as much time to file their reports as they would have had if OMB approval had been obtained and published in late 2016." *Extension Order*, para. 10. Additionally, the WCB "acknowledge[d] Pay Tel's comments included an appendix requesting clarification of some of the instructions to the reporting requirements, we find that we do not need to address those issues in this Order." *Extension Order*, para. 10.

On May 25, 2017, the WCB issued a letter addressing Pay Tel's questions:

I am writing in response to the requests for clarification Pay Tel Communications, Inc. (Pay Tel) included in the exhibit attached to its March 28, 2017 filing in WC Docket 12-375.

The Pricing Policy Division staff has reviewed Pay Tel's questions and our responses are reflected in the attached appendix. Please note that these responses are advisory in nature to assist Pay Tel in submitting its annual reports, and reflect only the views of Division staff. The responses do not contravene the requirements and definitions of the Commission's Order and rules. Nor do they supersede or supplant the language in the forms and instructions that the Office of Management and Budget approved in January.

PPD Staff Interpretation Letter, WC Docket No. 12-375, DA 17-515, pg. 1 (WCB May 25, 2017).² The PPD Staff then responded to Pay Tel's specific questions, including the following relevant excerpts:

¹ Securus Technologies, Inc. Motion for Extension, WC Docket No. 12-375 (filed Mar. 10, 2017) ("Securus's Motion").

² The full PPD Staff Interpretation Letter is provided in Appendix A for convenience.

Section I-Basic Information Item 7. The Instructions ask that the ICS provider list the number of prisons in which the provider currently offers ICS.

(1) Should providers include any prison served at any time during calendar year 2016, or only those served as of December 31, 2016? **Staff Response: Those served as of December 31 of the preceding calendar year.**

....

Items 8-10. The Instructions ask that the ICS provider list the number of jails in which the provider currently offers ICS for jails with varying ADP.

(1) Should providers include any jail served at any time during calendar year 2016, or only those served as of December 31, 2016? **Staff Response: Those served as of December 31 of the preceding calendar year.**

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Sections II and 11(a) - ICS Rates & Narrative Description of ICS Rates

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(3) Rates changed for jails on June 20, 2016 due to the elimination of per-call charges and the transition to a per-minute rate for all intrastate calls. Should providers report the rate prior to June 20, 2016, or after June 20, 2016, or both? **Staff Response: Both. Please describe any changes in the rates.**

PPD Staff Interpretation Letter, WC Docket No. 12-375, DA 17-515, pgs. 2-3 (WCB May 25, 2017).

I. The PPD Staff’s Interpretation that Rule 64.6060 Requires Reporting of All Rates Charged Throughout the Calendar Year Contradicts the Rule’s Language, and Should Therefore Be Set Aside or Otherwise Disregarded as It Exceeds the FCC’s Authority.

Rule 64.6060 plainly states that providers must submit reports containing *current* interstate, intrastate, and international rates for ITS. It is commonly understood that the use of the term “current” is synonymous with the “present”, which necessarily excludes instances occurring in the past. Thus, the Rule’s use of requiring “current” rates is a requirement for the present rate, and not rates charged in the past. Notably, the Rule 64.6060(a)(1) has no language to suggest more than one rate is required, which is in contrast with other parts of the Reporting Rule that do have language requiring multiple amounts or instances, such as 64.6060(a)(3)

(requiring the “Monthly amount”) and 64.6060(a)(4) (requiring the per-minute rates and ancillary service charges applied to all video visitation services). Indeed, the PPD Staff recognizes that the use of the term “current” signifies a single point in time when it requires information about a provider’s clients as of December 31, 2016. It is consistent to extend such a logical interpretation to the rate information required. To require multiple rates - past and present rates - contradicts the language of the Reporting Rule and, therefore, expands the scope of the requirements beyond the FCC’s authority.

For these reasons, the PPD Staff’s interpretation of requiring multiple rates should be set aside or otherwise disregarded. Rather, the providers should be required to provide the current rate for clients as of December 31, 2016, as supported by the plain language of the Reporting Rule.

II. In the Alternative, the FCC Should Extend the Due Date for the Reporting Rule to Allow for Providers to Gather the Additional Information.

If the WCB chooses to set aside or otherwise disregard the PPD Staff’s interpretation, ICSolutions can meet the July 1, 2017 deadline. If, however, the WCB adopts the PPD Staff’s interpretation as to the information required, then ICSolutions respectfully requests the FCC to extend the deadline for reporting to September 1, 2017 so it can have time to write a program to extract and compile all the data that the WCB wants to collect. This extension would give providers approximately 3.5 months to extract the additional data from the May 25, 2017 date of the *PPD Staff Interpretation Letter*, the date when it became known that the WCB intended to collect this additional information. Prior to the *PPD Staff Interpretation Letter*, providers had no way of knowing the WCB’s interpretation and intended application of the Reporting Rule. Indeed, even the FCC’s reporting forms failed to make it clear what information was required, as

shown by Pay Tel submitting questions requesting the WCB to articulate the data required on the reporting forms, a request which was declined to be addressed in the WCB's Order issued on May 8, 2017.

It should be noted that the requested extension provides for less time than the 4-month period generally allowed for extraction under the Reporting Rule, and less than the 4-month period the WCB intended to give providers with extending the deadline initially to July 1, 2017, prior to its clarification of the reporting forms. If the WCB intends to collect the additional data, an extension of the deadline to submitting the annual reports on or by September 1, 2017 is appropriate given that the data the WCB intends to require is significantly more than the interpretation of the terms in the Reporting Rule as they are commonly understood.

Respectfully submitted this 1st day of June, 2017.

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June 1, 2017

CERTIFICATE OF SERVICE

I hereby certify that, on June 1, 2017, the foregoing Motion was served via electronic mail on the following persons:

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